



Will & Testament: What do you need to do?

Review you last will and testament. Speak to your financial adviser and see if you need a testamentary will, or speak to us regarding your wills and powers of attorney.



New Super changes...what it means to you

Young Families

Unless you are earning a substantially large income or putting extra money into your super, the new taxes will not likely affect you. The \$500 super co-contribution payment remains in place.

Older families

Salary sacrifice is still available. Think before you start a self-managed super fund and buying an investment property with it. This strategy has suffered from the new changes to capital gains tax.

Empty nesters

Changes to capital gains tax within super pensions where the first \$100,000 will be tax-free. A higher limit for tax-deductible super contribution benefits for over 50 applies from July 2014.

Continued Page 2

Issue 6

- Page 2 New Super changes
- Page 2 One word “and” costs \$1,000,000
- Page 3 Deceased Estates
- Page 5 Family law
- Page 2 Liability of employers for negligence of employees

7 Kororoit Creek Road
Williamstown
Victoria
3016

Telephone 03 9397 1900
Facsimile 03 9399 9343

Email: admin@kooblalslawyers.com.au

Follow us: Facebook, Twitter, LinkedIn, YouTube



New Super changes

Retirees

If your super earns more than \$100,000 a year in retirement, you can withdraw the excess amount tax-free and invest it elsewhere. If the excess remains in the super, it will be taxed at 15% per annum. If your super of more than \$2 million earns 5% return per annum, or your super of more than \$1 million earns 10% per annum, you will be affected.

Capital Gains Tax

Existing assets with a capital gains tax liability will be affected 10 years later from 01 July 2024. This will stop people selling a property inside a self-managed super fund tax-free. However, if you have a property in the super fund, you have to sell it before 01 July 2024 to avoid the tax.



Liability of employers for negligence of employees

An employee claimant was severely injured when a fellow employee, without warning, struck the claimant, causing him to fall. Was the employer liable?

No. The court found that the employer would only be liable if the fellow employee was entrusted to protect the employer's property, customers or employees for which the employer would have been responsible. If there is no protective discretion given to the employee, the employer is not liable: *Blake v Perry Nominees* [2012] VSCA 122.



Get your lease agreement drawn up by your lawyer.

One word "and" costs \$1 million

A tenant in New South Wales agreed that rent be paid based on the value of the land **and** the new restaurant building. The lease agreement however was incorrectly drawn in that it had one word "and" missing. The tenant paid the rent on the value of the land only, but refused to pay the additional rent based on the building as well. The damages suffered were \$1 million. Have your documents carefully checked, and better still, carefully drawn by your lawyer. The fees you pay may be far less than what it may cost you to litigate.

Deceased Estates

What is probate and is it necessary?

Probate is a document given by the Supreme Court that confirms the validity of the will and the appointment of the executor. Some estates that are small and do not contain real estate will not require probate. Where property is in joint names (such as a husband and wife), it may be dealt with by way of a survivorship application without probate.



Beneficiary

Any person or entity (charity for example) that receives a benefit from the estate.

An Estate

All the property and liabilities of a person in existence after a person's death.

Executor

A person appointed in a will to carry out the wishes of the will maker. This is a position of trust. The executor must act in the best interests of the estate and the beneficiaries and not act in conflict of any party's interest.

Must all beneficiaries agree with the decisions of the executor?

All the beneficiaries do not have to agree with the decision of the executor if the executor is carrying out the wishes of the will maker as set out in the will. All the beneficiaries can however agree in writing by way of a Deed of Family Agreement to rearrange the distribution of the estate. Before consenting to a change in the distribution, beneficiaries must obtain their own independent legal advice. The lawyers acting for the estate cannot give that advice to the beneficiaries.

Executor fees

An executor is entitled to be reimbursed by the estate for any amounts paid. An executor may claim remuneration for "pain and troubles" if the executor is not a beneficiary in the will. An executor may receive some payment for their work if: -

- The will makes such provision;
- A gift to the executor is included in the will;
- If all the beneficiaries agree on an amount the executor should be paid;
- If the Supreme Court makes such an order.

Should there be a reading of the will?

Is not usual to have a formal reading of the will. Usually the executor or the solicitor appointed by the executor informs the beneficiaries.

Continued from page 3

Can I request a copy of the will?

Any of the following may request a copy of the will: -

- Any person named in the will.
- Any person named in an earlier will as a beneficiary.
- Any spouse or domestic partner of a will maker.
- Any parent, guardian, or children of the deceased.
- Any parent or guardian of a minor named in the will.
- Any creditor or person who has a claim against the estate.

Contested Wills – family provision claims outside the 6 months period

Application for family provision when contesting a will must be lodged: -

- Within six months of probate being granted, and,
- Before the final distribution of the estate.

If the will was not contested within six months, the court takes into consideration: -

- The reasons for the delay,
- The length of the delay,
- The strength of any substantive claim,
- Prejudice an extension of the time will cause to any party.

Courts will consider granting an extension of time unless the claim is clearly hopeless. Those seeking extension do not necessarily need to explain their delay unless they were notified of their rights to claim.



Rules against Tax Avoidance

Following some decisions in cases going against the ATO, the government has decided to tighten up the rules that target tax avoidance by taxpayers. Draft legislation bringing the changes the government wishes to make will be introduced in the autumn sittings of Parliament.

It is good to be aware that such provisions exist and bear them in mind when embarking on transactions.

We will be able to advise you if there is any concern about these provisions with respect to your business activity.

Family law

Children

In *McGregor* [2012] Federal Magistrate O'Dwyer ordered the children who were living with the father to live with the mother. The magistrate relied on published research. The father appealed to the Full Court and succeeded in overturning the parenting orders.

Skype conversation not admissible

In *Kawada* [2012] the court refused to accept transcript of Skype conversations between the husband and the second respondent. The wife had intercepted the communications without consent and in contravention of *Communications (Interception and Access) Act 1970*.

Financial Agreement Binding

In *Hoult* [2012] a Financial Agreement was declared not binding at an earlier hearing due to lack of legal advice. The court concluded that it was binding because the wife received benefits under the agreement.

Property

In *Kroll* [2012] the marriage lasted eleven years plus five years pre-marital cohabitation. There were two children and \$1.3m assets. The husband bought a house before the relationship for \$345,000 and later sold for \$449,000. The court assessed the husband's contribution as 70% but reduced it by 15% due to the wife's lower income and earning capacity.

Our location

Boyle Telfer & Kooblal
Barristers & Solicitors
7 Kororoit Creek Road
Williamstown
Victoria
3016

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Contact us

Telephone 03 9397 1900

Facsimile 03 9399 9343

Email: admin@kooblal lawyers.com.au

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